

### REMARKS

The Office Action dated September 18, 2007 has been received and reviewed. This response, submitted along with a Petition for a Three-Month Extension of Time and a Request for Continued Examination (RCE), is directed to that action.

Claim 1 has been amended and claim 5 is new. Support for the amendments and new claim can be found in paragraphs [0011] and [0018] of the published US application 2005/0205685 A1. No new matter has been added.

The applicants respectfully request reconsideration based on the foregoing amendments and the following remarks.

#### Claim Rejections- 35 U.S.C. §103

The Examiner rejected claims 1, 3 and 4 under 35 U.S.C. §103(a) as obvious over Congro (US 3,724,459). The applicants respectfully traverse this rejection.

The applicants submit that a *prima facie* case of obviousness cannot be established because a person of ordinary skill in the art would not be motivated to modify the device of Congro to achieve the present invention. Congro teaches an inhalation device wherein the apertures are located on the top of protuberances designed to fit *into* either one or both nostrils of a user. (See Congro, col. 2, lines 42-45). Direct nostril insertion of the apertures and protuberances is required to inhale vapors of the medicament when using Congro's device.

The presently claimed invention, on the other hand, explicitly requires that the apertures *do not* come into direct contact with the user's nose. Accordingly, the presently claimed invention allows local delivery of vapors to a user without direct nostril contact.

The presently claimed invention is able to deliver lower intensity vapor while still guaranteeing local delivery. This is simply not taught or suggested in Congro. Rather, Congro only suggests that his device be used for the delivery of medicine directly “into the nasal passages” (Congro, col. 1, lines 26-27). Congro’s explicit directive of use would only suggest to the skilled artisan device’s fitting into the nostril. In fact, modifying Congro to achieve the presently claimed invention would render Congro’s device unsatisfactory for its intended purpose. Indeed, if a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

Based on the reasons detailed above, the applicants submit that a *prima facie* case of obviousness cannot be established. Accordingly, the applicants respectfully request that the Examiner withdraw this rejection, and allow the claims to proceed to issue.

The applicants believe the claims are now in condition for allowance, and respectfully request such favorable action. If any issues remain, the resolution of which can be advanced through a telephone conference, the Examiner is invited to contact the applicant’s attorney at the phone number listed below.

#### CONDITIONAL PETITION FOR EXTENSION OF TIME

If entry and consideration of the amendments above requires an extension of time, Applicants respectfully requests that this be considered a petition therefore. The Commissioner is authorized to charge any fee(s) due in this connection to Deposit

Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account

No. 14-1263.

Respectfully submitted,

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